

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alfredo Gonzalez	Team: Squad #3	CCRB Case #: 201103456	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/17/2011 9:45 AM	Location of Incident: [REDACTED]	Precinct: 42	18 Mo. SOL 9/17/2012	EO SOL 9/17/2012	
Date/Time CV Reported Thu, 03/17/2011 10:11 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 03/17/2011 10:11 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Galvin Ferguson	02902	929434	042 PCT
2. POM Cesar Garcia	22263	932691	042 PCT
3. DTS David Terrell	4523	931316	042 PCT
4. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Johnny Diaz	03186	918944	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.POM Galvin Ferguson	Force: At [REDACTED] in the Bronx, Police Officer Galvin Ferguson used physical force against [REDACTED]	[REDACTED]
B.POM Cesar Garcia	Force: At [REDACTED] in the Bronx, Police Officer Cesar Garcia used physical force against [REDACTED]	[REDACTED]
C.DTS David Terrell	Force: At the 42nd Precinct stationhouse, Detective David Terrell used pepper spray against [REDACTED]	[REDACTED]
D.DTS David Terrell	Force: At the 42nd Precinct stationhouse, Detective David Terrell used physical force against [REDACTED]	[REDACTED]
E.DTS David Terrell	Force: At the 42nd Precinct stationhouse, Detective David Terrell used a chokehold against [REDACTED]	[REDACTED]
F.DTS David Terrell	Force: At the 42nd Precinct stationhouse, Detective David Terrell used physical force against [REDACTED]	[REDACTED]
G. Officers	Abuse: At the 42nd Precinct stationhouse, officers did not obtain medical treatment for [REDACTED]	[REDACTED]

## Case Summary

██████████ ██████████ filed this complaint, via the Call Processing System, on behalf of herself and her son ██████████ ██████████ on March 17, 2011. This case was closed as complainant uncooperative on May 20, 2011; however, on December 31, 2015, the Board granted ██████████ ██████████ request to reopen the case.

On March 17, 2011, at approximately 9:45 a.m., [REDACTED] was attending school at the Bronx Leadership Academy – located at [REDACTED] in the Bronx – when he was asked to step out of class by an assistant principal, after which he encountered PO Cesar Garcia and PO Galvin Ferguson of the 42<sup>nd</sup> Precinct. The officers placed [REDACTED] in handcuffs and took him to a security room within the school. Inside the security room, PO Ferguson and PO Garcia allegedly removed [REDACTED] handcuffs and punched him in the face and torso, causing him to sustain a “busted” lip (**Allegations A and B**). Afterward, [REDACTED] was transported to the 42<sup>nd</sup> Precinct stationhouse. While at the stationhouse, Det. David Terrell allegedly pepper sprayed and punched [REDACTED] (**Allegations C and D**). [REDACTED] went to the stationhouse, with her son [REDACTED] [REDACTED] and her daughter [REDACTED] after finding out that her son had been arrested, but officers commanded her to leave. [REDACTED] [REDACTED] exited the stationhouse and was walking away when Det. Terrell went after her and allegedly put his arm around her neck, while behind her, and took her to the ground, causing her to land on her back (**Allegations E and F**). [REDACTED] [REDACTED] was then placed in handcuffs. [REDACTED] [REDACTED] was charged with resisting arrest and obstructing governmental administration. [REDACTED] [REDACTED] was charged with assault. [REDACTED] [REDACTED] back was allegedly injured during the incident.

There was no video footage available for this case.

## Mediation, Civil, and Criminal Histories

- This case was unsuitable for mediation due to [REDACTED] arrest.
- [REDACTED] previous attorney, [REDACTED] filed a Notice of Claim on her behalf in 2012, seeking two million dollars in damages for her “false arrest, unlawful imprisonment, malicious prosecution, assault, battery, violation of state and federal, civil, and constitutional rights, personal injuries and suffering, embarrassment, humiliation, and emotional and mental distress” (BR 01).
- A request regarding [REDACTED] 50H hearing was sent on July 12, 2016, but there has been no response (BR 02).
- [REDACTED] did not file a Notice of Claim against the City of New York (BR 03).
- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## Civilian and Officer CCRB Histories

- This is [REDACTED] 12<sup>th</sup> CCRB complaint; however, most of her complaints were forwarded to OCD. In CCRB 201510704, [REDACTED] allegation of excessive force by her arresting officer was exonerated (BR 06).



§ 87(2)(g)

**Allegation A – Force: At [REDACTED] in the Bronx, Police Officer Cesar Garcia used physical force against [REDACTED].**

**Allegation B – Force: At [REDACTED] in the Bronx, Police Officer Galvin Ferguson used physical force against [REDACTED].**

[REDACTED] alleged that after he was asked to step out of class into the hallway, he encountered PO Garcia and PO Ferguson. The officers then commanded [REDACTED] to put his hands behind his back, to which he complied. [REDACTED] denied that he resisted being placed in handcuffs. [REDACTED] was then walked to a security room in the school and placed inside. PO Ferguson then commanded the female security guard to leave from the front desk. Once the security guard left, PO Garcia stood by the security room's threshold, as a "lookout," and PO Ferguson put on some black Nike gloves. PO Ferguson then commanded PO Garcia to remove [REDACTED] handcuffs. Afterward, PO Ferguson began to taunt [REDACTED] and stated, "Oh, you want to be a bully? You want to touch girls?" [REDACTED] ignored his comments and kept his hands by his side. PO Ferguson then allegedly "swung" at [REDACTED] however, [REDACTED] dodged the punch and then went to the floor and tried cover his face. [REDACTED] was on his stomach when he went to the floor. PO Ferguson then allegedly punched [REDACTED] two times in the face and three times in his torso. Afterward, PO Garcia also allegedly punched him once in the body. [REDACTED] did not resist while he was on the floor. [REDACTED] was then transported to the 42<sup>nd</sup> Precinct stationhouse. [REDACTED] alleged that he sustained a "busted lip" due to PO Ferguson's and PO Garcia's use of force (BR 08).

In her DIRAD regarding this complaint, [REDACTED] alleged that PO Ferguson and PO Garcia arrested [REDACTED] after "force allegations were made against him by young ladies at school." After [REDACTED] was handcuffed, he was taken to a backroom and PO Ferguson allegedly removed his handcuffs and asked [REDACTED] if he wanted to fight. PO Ferguson then allegedly "swung" and hit [REDACTED] on the side of his face and on his lip. [REDACTED] was not present for the above-mentioned allegations. When she went to the stationhouse, she observed that [REDACTED] face was swollen, that his lip was "busted," and that there was blood all over his shirt (BR 09).

§ 87(2)(b)

[REDACTED] Upon arriving to the school, the officers encountered [REDACTED] in a gymnasium. They asked [REDACTED] to step out of class, to which he complied. PO Garcia approached [REDACTED] and informed him that they had to go to the principal's office. [REDACTED] replied, "Don't fucking touch me." PO Garcia and PO Ferguson then attempted to guide [REDACTED] by his elbows, but he immediately pulled away from them and began to fight, swinging his hands and arms towards the officers' direction. A struggle ensued as they attempted to place [REDACTED] in handcuffs. The officers attempted to grab his arms to get him under control and [REDACTED] went down to the floor during the struggle. PO Garcia could not recall how he ended up on the floor. PO Garcia could

not recall if some other type of force, other than grabbing [REDACTED] [REDACTED] arms, was used. PO Garcia could not recall if he punched [REDACTED] [REDACTED] but he stated it was possible. PO Garcia did not observe any of PO Ferguson's actions because he was focused on [REDACTED] [REDACTED]. The officers repeatedly commanded [REDACTED] to stop resisting. PO Garcia could not recall how long the struggle lasted before [REDACTED] was eventually contained. After [REDACTED] was handcuffed, PO Garcia was in a lot of pain, due to a swollen hand that he sustained during the struggle. PO Garcia could not recall how he sustained the injury, but just that it occurred while he was struggling with [REDACTED] [REDACTED]. [REDACTED] was still "violent" after being handcuffed. PO Garcia could not recall what he was doing specifically, but he remembered that he needed to be removed to another room for the safety of school faculty and the officers. PO Garcia did not know who removed him or where he was moved. PO Garcia did not observe [REDACTED] being taken to the security room, and he did not observe [REDACTED] being punched in the face. PO Garcia did not observe any injuries on [REDACTED] [REDACTED] and [REDACTED] did not complain of any injuries while in his presence. PO Garcia requested medical assistance due to his injured hand. Once the ambulance arrived, PO Garcia was transported to the hospital (BR 10).

§ 87(2)(b)

[REDACTED] PO Ferguson and PO Garcia encountered [REDACTED] in the school's hallway. Upon initiating the arrest, [REDACTED] resisted by cursing, flailing his arms, and being threatening. PO Ferguson recalled there was an altercation when they attempted to place him under arrest, but he could not recall specifically what occurred. PO Ferguson could not recall if [REDACTED] ever tried to strike him or his partner. When asked if he recalled whether [REDACTED] hit his head against a wall or a window, PO Ferguson stated that he recalled [REDACTED] [REDACTED] "lunging" towards a window and hitting himself. PO Ferguson did not recall seeing any blood on [REDACTED] afterward. PO Ferguson did not strike [REDACTED] during the altercation, and he could not recall if PO Garcia did so. PO Ferguson did not recall in what part of the school [REDACTED] was handcuffed. PO Ferguson did not recall if [REDACTED] was ever taken to a small room. PO Ferguson denied that he ever removed [REDACTED] [REDACTED] handcuffs and struck him, and he did not recall his partner doing anything similar. PO Ferguson did not have any independent recollection of PO Garcia sustaining an injury during the arrest. PO Ferguson did not recall if other officers assisted in the arrest or if any supervisors responded to the location (BR 11).

Det. Terrell testified that he responded to the location, but he could not recall the specific supervisor or officers that were there. Det. Terrell observed PO Garcia in an ambulance and that his hand was swollen. PO Garcia informed him that he "got into a fight" with [REDACTED] [REDACTED] and his hand was injured during the struggle. Det. Terrell did not see [REDACTED] [REDACTED] at the arrest location and had no interaction with him. Det. Terrell did not know how [REDACTED] [REDACTED] was transported to the 42<sup>nd</sup> Precinct stationhouse. Det. Terrell was later informed by PO Ferguson that [REDACTED] had injured himself at the school by head-butting some glass (BR 12).

[REDACTED] [REDACTED] arrest report, which was prepared by PO Ferguson, noted that during his arrest, he became violent and irate and proceeded to hit his head on two school hall windows, causing them to break. [REDACTED] continued to resist his arrest by swinging his head and kicking his legs towards the officers. While in the process of detaining [REDACTED] [REDACTED] PO Garcia sustained bruising and swelling to his right hand and was removed to [REDACTED] (BR 13). In PO Garcia's Line of Duty Injury Report, he noted that [REDACTED] became "combative and belligerent" while being handcuffed, and that he injured his right hand against the floor and wall as he struggled to handcuff him (BR 14). [REDACTED] [REDACTED] arrest photograph does not show any obvious signs of physical injury; however, there is some slight brown/reddish discoloration on his collar that could be blood (BR 15).

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**Allegation C – Force: At the 42<sup>nd</sup> Precinct stationhouse, Detective David Terrell used pepper spray against [REDACTED].**

**Allegation D – Force: At the 42<sup>nd</sup> Precinct stationhouse, Detective David Terrell used physical force against [REDACTED].**

[REDACTED] alleged that after he was placed in a cell, Det. Terrell pepper sprayed him. [REDACTED] initially mentioned that he was pepper sprayed approximately ten minutes after arriving to the stationhouse, but he later clarified that he could not recall when it was used. [REDACTED] could not recall whether he was pepper sprayed before or after his mother arrived to the stationhouse. [REDACTED] could not recall if any particular action initiated Det. Terrell's use of the pepper spray, but he did recall that immediately prior to using the pepper spray, Det. Terrell stated to him, "Be quiet. We don't want to hear your mouth." [REDACTED] did not say anything before Det. Terrell's command, nor was he spitting at the officer. Det. Terrell was outside the cell (the door remained closed), approximately two feet away from [REDACTED] when he used his pepper spray, and he used it for two to three seconds. Det. Terrell was by himself when the pepper spray was used. [REDACTED] was unsure whether [REDACTED] observed him getting pepper sprayed. [REDACTED] also thought that Det. Terrell may have punched him one time during their interaction at the stationhouse. [REDACTED] was unable to provide more context regarding Det. Terrell's alleged use of pepper spray or his punch. [REDACTED] also alleged that he heard officers bring [REDACTED] into the stationhouse, and afterward, he could hear the sound of pepper spray being used and [REDACTED] screaming and complaining that her eyes were burning (BR 08).

In her in-person statement, [REDACTED] alleged that upon arriving to the stationhouse, she looked through a window from the outside and observed four to five officers punching [REDACTED] in the face and body while he was rear-cuffed. [REDACTED] identified Det. Terrell and PO Garcia as two of the officers that allegedly punched [REDACTED]. [REDACTED] also alleged that [REDACTED] complained of having been pepper sprayed, but she did not witness it occur. She learned that he had been pepper sprayed after she was arrested and was placed inside a cell adjacent to [REDACTED] at which point, [REDACTED] complained to her that he could not breathe and that his eyes were burning due to having been pepper sprayed (BR 16). In her DIRAD, [REDACTED] alleged that she was outside looking through a window into the 42<sup>nd</sup> Precinct stationhouse when she observed Det. Terrell using pepper spray against her son (BR 09). In his phone statement, [REDACTED] stated that he went to the stationhouse with his mother and observed officers "manhandling" [REDACTED] and throwing him to the ground outside of the stationhouse, after which Det. Terrell allegedly punched [REDACTED] in the torso. Afterward, [REDACTED] was placed in handcuffs. [REDACTED] also mentioned that [REDACTED] was pepper sprayed inside the cell, but he did not witness that portion of the incident (BR 17).

Det. Terrell testified that he did not recall interacting with [REDACTED] or speaking with him at the stationhouse. Det. Terrell denied that he ever punched [REDACTED] and he did not recall using pepper spray against [REDACTED] [REDACTED] but if he had, he stated that there would be a medical treatment of prisoner report stating so. Det. Terrell did not observe any other officer pepper spray or punch [REDACTED] (BR 12). PO Ferguson testified that he processed [REDACTED] [REDACTED] arrest at the 42<sup>nd</sup> Precinct stationhouse. PO Ferguson placed [REDACTED] inside a holding cell, but he could not recall if there were other prisoners with him. PO Ferguson did not pepper spray [REDACTED] [REDACTED] while he was in the stationhouse, and he did not see any other officer do so. PO Ferguson did not strike [REDACTED] [REDACTED] while he was in the stationhouse, and he did not observe any other officer do so. PO Ferguson did not recall observing any injuries on [REDACTED] [REDACTED] and he did not recall if [REDACTED] [REDACTED] complained of any (BR 11). Sgt. Diaz had no recollection of the incident (BR 18).

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

**Allegation E – Force: At the 42<sup>nd</sup> Precinct stationhouse, Detective David Terrell used a chokehold against [REDACTED].**

**Allegation F – Force: At the 42<sup>nd</sup> Precinct stationhouse, Detective David Terrell used physical force against [REDACTED].**

In her in-person statement, [REDACTED] alleged that she went inside the stationhouse to complain about how they were treating her son. During this time, [REDACTED] contacted her attorney, [REDACTED] via telephone, and he advised her to get off the stationhouse's premises. [REDACTED] complied, left the stationhouse, and walked across the street. [REDACTED] stated that she was inside the stationhouse for less than one minute before exiting. After crossing the street, Det. Terrell, PO Garcia, and three unidentified officers exited the stationhouse and pursued her. [REDACTED] crossed the street once more and began to walk away quickly. The officers continued to pursue her in a slow jog until Det. Terrell reached her and stated, "You like to tell everything." Immediately after, Det. Terrell allegedly wrapped his arm around [REDACTED] neck while he was behind her, put his leg behind hers, and took her down to the ground. [REDACTED] landed on her back, and she was placed in handcuffs. [REDACTED] stated that she did not receive any commands prior to Det. Terrell's action. [REDACTED] could not approximate how long Det. Terrell's arm was around her neck and she could not say whether her breathing was restricted because it happened quickly. After she was on the ground, [REDACTED] was commanded to get up, but she told the officers that she could not because her back was hurt. Two officers then picked her up and "dragged" her into the stationhouse. [REDACTED] was unable to specify which officers picked her up. [REDACTED] stated that her other son, ##### [REDACTED] and her daughter, [REDACTED] were with her at the time this occurred. [REDACTED] alleged that she sustained three to four herniated disks, a bulging disk on her neck, and nerve damage to her left side as a result of this incident, for which she has to take medication "for the rest of her life." [REDACTED] did not seek medical attention until six to eight months after the incident (BR 16). In [REDACTED] DIRAD, she did not allege that Det. Terrell placed her in a chokehold, that he took her to the ground, or that she suffered a back injury. [REDACTED] only alleged that her left wrist was "black and blue" due to the handcuffs being too tight (BR 09). [REDACTED] left two more messages after her initial DIRAD, but she did not mention the above-listed allegations.

[REDACTED] stated that he heard his mother's and his brother's voices outside while he was in his cell, and he heard officers commanding them to get off the stationhouse's premises. He also heard his mother and brother scream, but he could specify what they were saying. Approximately five minutes later, [REDACTED] was brought into the stationhouse in handcuffs and placed inside a cell next to his. [REDACTED] initially complained about her eyes burning. [REDACTED] also mentioned that [REDACTED] complained about her back and that she could not "adjust it correctly" (BR 08). When [REDACTED] was questioned about his mother's portion of the incident, he stated that he needed to call the CCRB back and would not provide any details regarding her injuries (BR 17).

Det. Terrell testified that [REDACTED] arrived at the stationhouse and was belligerent and cursing at the officers. [REDACTED] was asked numerous times to leave, but she refused to do so and stated, "Suck my dick," and, "I'll fuck you up." Eventually, PO Ferguson arrested [REDACTED] because of her behavior and her unwillingness to leave the stationhouse. Det. Terrell believed that [REDACTED] was first escorted outside the stationhouse and was subsequently arrested outside. Det. Terrell believed that PO Ferguson placed [REDACTED] in handcuffs and that he did not have any



issues handcuffing her. Det. Terrell denied that he placed [REDACTED] in a chokehold or that he took her to the ground, and he did not observe any other officer do so (BR 12).

PO Ferguson testified that [REDACTED] arrived at the stationhouse and behaved belligerently. [REDACTED] cursed and was threatening, but PO Ferguson could not recall any specific statements she made or actions she took. At some point, [REDACTED] was escorted out of the stationhouse due to her behavior. PO Ferguson did not personally escort her out or assist. PO Ferguson could not recall which officer escorted [REDACTED] out of the stationhouse. PO Ferguson recalled that Det. Terrell was in the stationhouse when the above-mentioned incident occurred. PO Ferguson did not have any independent recollection of being [REDACTED] arresting officer and he could not recall what occurred after [REDACTED] was escorted out of the stationhouse. PO Ferguson did not recall being involved in placing [REDACTED] in handcuffs, and he denied that he, or any other officer, placed [REDACTED] in a chokehold and took her to the ground (BR 11). Sgt. Diaz had no independent recollection of any incident involving [REDACTED] (BR 18).

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**Allegation G: At the 42<sup>nd</sup> Precinct stationhouse, officers did not obtain medical treatment for [REDACTED].**

In her in-person statement, [REDACTED] alleged that she screamed that she and [REDACTED] needed to see a doctor while they were inside their cells, but officers were unresponsive and they did not receive any medical treatment. [REDACTED] acknowledged that she did not address her request to a specific officer. [REDACTED] did not mention that EMS responded to the stationhouse for [REDACTED] (BR 16). In [REDACTED] DIRAD, [REDACTED] stated that EMS arrived to the location, but that the officers lied to EMS and stated that [REDACTED] and [REDACTED] denied their assistance (BR 09). [REDACTED] stated that after he and [REDACTED] had been placed in their cells, he could hear his mother asking for medical treatment. [REDACTED] acknowledged that EMS responded to the location at approximately 6 p.m., but he did not know if his mother received treatment (BR 08). Both [REDACTED] and [REDACTED] stated that they were placed in cells adjacent to each other.

PO Ferguson did not have any independent recollection of EMS responding to the stationhouse for [REDACTED] nor did he recall why EMS was requested to the location. PO Ferguson could not recall if [REDACTED] requested medical attention or if EMS responded to the stationhouse for her (BR 11). Det. Terrell could not recall if he was present when EMS arrived

and he did not know what type of treatment [REDACTED] received. After departing, Det. Terrell did not have any further interaction with [REDACTED] or [REDACTED] (BR 12).

§ 87(2)(g)

§ 87(2)(g)

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Squad: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print	Date
Supervisor:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date